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Testimony of Attorney General Martha Coakley
Joint Committee on the Judiciary
S.B. 629 / H.B. 1379, *An Act to Combat Economic Crime*
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Good afternoon Chairwoman Creem, Chairman O'Flaherty, and members of the Committee. I am here today to testify in support of House Bill 1379 and Senate Bill 629, *An Act to Combat Economic Crime*, which I re-filed this session along with a coalition of legislators and District Attorneys, including lead sponsors Senator Steven A. Baddour and Chairman James E. Vallee.

As you know, this comprehensive economic crime legislation is designed to give law enforcement the necessary tools to investigate and prosecute sophisticated illegal activities in the 21st century by criminalizing money laundering and enterprise crimes, and by updating our wire interception laws.

During my over 20 years of experience working as a prosecutor, especially my experiences in the white collar unit in the Middlesex District Attorney's Office, in the federal Organized Crime Strike Force at the United States Attorney's Office, and now as the Attorney General overseeing complex white collar investigations and prosecutions, I know that there are strengths and weaknesses throughout our state's criminal justice system.

It is important that as things change in our society, we constantly evaluate how we respond to the new types and techniques of criminal behavior in today's world. Unfortunately, while criminals in Massachusetts are taking advantage of the vast advances in technology, our laws in many ways have not kept up with these technological changes. This bill is designed to help address that.

I also know from my experiences as a prosecutor that the federal government has tools that the state government does not have to prosecute those whose business is criminal activity, and those who hide the source and the proceeds of such illegal activity. In other words, state law has been ineffective for investigating and prosecuting criminal enterprises.

The proposal before you today allows the Commonwealth to help deter, investigate, and prosecute such crime. It will send a message to those who finance and profit from the business of crime, including loan sharking, human trafficking, murder,

extortion, drug peddling, child sexual exploitation, prostitution and gun running.

The bill updates our Commonwealth's laws in 3 key areas: Money Laundering, Enterprise Crime, and our existing Wiretap laws.

Money Laundering:

Money laundering involves concealing or "cleaning up" the source of illegally obtained money, and is a criminal offense under federal law and in 28 states across the country. Massachusetts has no money laundering statute. Our failure to combat money laundering creates a new critical public safety priority. Money laundering is frequently used as a way to conceal as well as bankroll large-scale, illegal enterprises such as terrorism, narcotics trafficking and other organized crime.

The money laundering statute also has been considered in the context of the expansion of legalized gaming in the Commonwealth. Money laundering is always a concern where casino gaming is legal. Illegal profits can be turned into chips, chips into money, and "winnings" are then taxed. Those engaged in enterprise crime can easily "launder" stashes of incriminating evidence through this and other methods. Both the House and Senate have recognized this and have incorporated our money laundering language into their gaming proposals, which are working their way through the legislative process right now. We believe a money laundering statute is critical if the Legislature chooses to move forward with legalized gaming in the Commonwealth.

Enterprise Crime:

In 2008, our Office established a new Enterprise and Major Crimes Division. Its focus is on illegal activity, including so-called organized crime families, street gangs, and large-scale drug and human trafficking groups. Many of these organizations have sophisticated structures and extensive supporting networks that allow them to engage in multiple criminal activities, such as money laundering, illegal gambling, running drugs and guns, credit card and identity theft, and other types of fraud. Casinos also tend to be a convenient target for those engaged in money laundering for the reasons cited above.

This enterprise crime bill provides law enforcement with necessary tools to investigate and mitigate those whose business is crime. By passing this legislation, we can deter and prosecute ring leaders and major players, who control and direct the enterprise but often do not partake in the actual commission of the crime.

As you know, last session the House passed our comprehensive enterprise crime statute as part of its expanded gaming proposal. Unfortunately, the Senate and subsequent Conference Committee version narrowed the statute to only capture activities that "affect gaming". This year, the narrow version of the bill has been filed by both the House and Senate again as part of the gaming proposals. We simply do not believe it is enough, both in the context of the gaming proposal and in the interest of public safety in the Commonwealth.

Based on our research, enterprise crime statutes exist under federal law and in 32 states across the country, but not in Massachusetts. Of the 13 states which permit commercial gaming (non-Indian resort-style casinos), 10 have enterprise crime statutes. Not a single state limits the scope of the criminal activity to “gaming related” enterprises.

This restriction hobbles the enterprise crime language. For instance, we know that prostitution rings and drug rings are likely to organize near casinos, and the enterprise crime statute would be extremely helpful in our investigation and prosecution of those rings. But are we able to prove that a human trafficking ring is “related to gaming”? What about organized crime? These are all open questions, and this unnecessary gaming restriction will serve as a significant impediment to law enforcement’s efforts to protect victims and the public.

The enterprise crime statute language that currently exists in the gaming bill is not enough. It is not enough to fully address the crimes associated with gaming, and it certainly is not enough to fully address the public safety issues that we face in the 21st Century.

Regardless of whether the full enterprise crime statute passes in the gaming bill, or afterwards as part of a broader public safety bill, it simply needs to happen.

Update to Wire Laws:

The Massachusetts wiretap statute in its current form was enacted in 1968 following the passage of the federal wiretap statute. Since that time, there have been virtually no changes to our state statute despite tremendous advancements in communication technology which themselves have changed the nature and structure of criminal enterprises and communications. The federal statute, and those of several states, have been revised and amended numerous times in response to those changes.

Criminals take full advantage of advancements in technology to obscure their true identities, facilitate their criminal communications and create new ways to victimize the citizens of the Commonwealth. One of the most important tools available to criminal law enforcement is court-authorized electronic surveillance. However, rapid changes have frustrated and will continue to frustrate law enforcement in this arena unless the statute is modernized to allow it to adapt.

As the Supreme Judicial Court noted recently in Commonwealth v. Tavares, the time has come to rectify the fact that the investigation and prosecution of some of today’s most destructive crimes are hampered by the outdated statute.

As part of our Economic Crime bill, the Massachusetts wiretap statute is updated in four principal ways.

First, it permits application for a wiretap warrant for a number of new crimes which have emerged over the last forty years. Among the new crimes are: possessing or using chemical, biological or nuclear weapons, possession or use of hoax substances;

communicating terrorist threats, placing explosives near persons or property; unlawful possession or storage of explosives; fraudulent use of credit cards; felony firearms offenses; and certain crimes against children.

The expanded crimes reflect the current reality of criminal threats to public safety, including terrorism, firearms assaults, identity theft and sex-related crimes against children. It is critical that our most potent law enforcement tools be available to address society's current needs and not be restricted to world of the 1960s.

The **Second** main feature of the revised statute is that, like the federal statute, it would permit a wiretap application to investigate a designated offense committed by an individual and would no longer restrict the application to "organized crime." This is a long overdue change that would allow electronic surveillance of individuals perpetrating serious crimes – a situation which has become more likely with the use of emerging technology. This change would permit electronic surveillance techniques to be used on an individual committing terrorist threats or attacks, kidnapping or hostage situation, human trafficking, identity theft or fraud or child pornography.

Without this change, law enforcement officers are handcuffed by a law that fails to acknowledge that an individual can and will affect widespread harm.

Third, our bill revises the definitions of the types of communications that can be intercepted to reflect modern technology. As it was in 1968, the current statute defines communications as being either oral or wire. The federal statute was amended twenty-five years ago expand that definition to electronic communication. While Massachusetts prosecutors and judges have routinely applied the 1968 law to these emerging forms of communication, a revision is long overdue so law enforcement is not chasing changes in technology.

The **Fourth** component of the revised state wiretap statute would again make it like the federal statute and allow for emergency interceptions where a written showing follows the initial interception within 48 hours. This is necessary because, unlike a traditional search warrant, which can be obtained in a matter of hours, an application for a wiretap warrant generally takes several days. There is no such time in situations where law enforcement is facing kidnappers, hostage takers or terrorists.

This legislation is good for public safety, and it is good for the economy in Massachusetts. Only five states do not have at least one of the three components of this bill on the books. Those states are Alabama, Kentucky, Maine, Massachusetts, and Vermont. Massachusetts should pass this bill and put the Commonwealth where it needs to be, because our laws must keep pace with technology and the reality of modern criminal enterprises.

An update to our statute was made all the more urgent after the SJC's recent decision in Commonwealth v. Tavares that clearly said that wiretaps must involve organized crime and did not apply to street gangs. The current law is so outdated, it is like asking our local police to continue on horses and buggies after the criminals began

driving around in cars. The SJC has urged an update to this law, our Office has urged an update to this law, and Governor Patrick also has urged an update to this law as part of his Youth Violence Prevention legislation. A 21st century statute will aid law enforcement in going after those major players who engage in gang violence, human trafficking, and other acts of exploitation and corruption.

Conclusion:

Finally, I recognize that the Committee is hearing several matters today, and I have also submitted letters of support for *An Act to Protect and Enhance the Rights of Child and Adult Victims and Witnesses of Crime* (S.B. 640), *An Act Relative to Workers' Compensation Insurance* (H.B. 468) (I filed this bill along with House Majority Leader Ronald Mariano and Senators Katherine Clark and Thomas M. McGee), *An Act Updating the laws to Protect Women's Health* (H.B. 515) and *An Act to Increase the Penalties for Corporate Manslaughter* (H.B. 2849 / S.B. 630). That bill, which I filed along with lead sponsors Senator Steven Baddour, Senate Minority Leader Bruce Tarr, and Chairman O'Flaherty, is a straightforward bill that will update the current manslaughter statute by increasing the penalty for corporations charged with manslaughter up from an antiquated cap that's nearly 200 years old. Specifically, the bill would increase the penalty to \$250,000 for a conviction for corporate manslaughter. While the current sentence for individuals convicted of manslaughter may be imprisonment up to 20 years, corporations convicted of manslaughter cannot be subject to imprisonment. The only penalty faced by corporations is a monetary fine. Currently, the statute sets that fine at a mere \$1,000. I also filed a letter in opposition to *An Act Relative to Banning Partial Birth Abortions* (H.B. 1333).

I appreciate the opportunity to talk to you today about these crucial criminal law updates. I urge you to consider these matters favorably. Our office remains committed to working with the Legislature for the adequate public and consumer protections we need. Thank you.